AFSLCC Ethics Briefing

- **Mr. Mark F. Stone**
- **Ethics & Fraud Remedies Directorate, AFMC Law Office, Wright-Patterson AFB**
- **Our ethics website: http://www.afmc-pub. wpafb.af.mil/HQ-AFMC/JA/lo/lojaf**
- **May 2000**

Overview

Briefing will cover rules on 10 subjects:

Conflicts of Interest

Financial Disclosure

Gifts

Government Property

Misuse of Govt. Position

Non-Federal Organizations

Off-Duty Employment

Procurement Integrity Law

Post-Govt. Employment

Travel

Definition -- Official vs. Personal Capacity

- **Acting in your "official capacity" means that:**
  - **You are acting on behalf of Federal Govt.**
  - **You may use govt. resources in support of your activities (e.g., funds, time, vehicles, supplies)**
  - **You may use your govt. title and org. name**
  - **Mil. members may use rank & branch of service**

- **Acting in your "personal capacity" means that:**
  - **You are acting as a private citizen**
  - **You generally may not use govt. resources**
  - **You may not use your govt. title or org. name**
  - **Mil. members may use rank & branch of service**

Conflict of Interest (COI) -- Mandatory Disqualification (1)

- **You may not participate personally & substan-tially (e.g., make a decision, give advice, make a recommendation) in any government matter that would affect the financial interests of:**
  - **You,**
  - **Your spouse,**
  - **Your minor child, OR**
  - **Your general partner**

COI -- Mandatory Disqualification (2)

- **You may not participate personally & substantially in any government matter that would affect the financial interests of:**
  - **An organization in which you are serving as officer, director, trustee, general partner or employee, OR**
  - **An organization with which you are negotiating for employment (or have an arrangement for future employment)**

- **Example: Employee who is officer in professional association may not give advice to CC on matter that affects the association's financial interests**

Conflict of Interest -- Discretionary Disqualification (1)

- **A supervisor may disqualify an employee from participating in a government matter that affects the financial interests of:**

  (1) A member of the employee's household

  (2) A relative with whom the employee has a close personal relationship

  (3) An organization in which employee is an active participant (e.g., committee chair)

COI -- Discretionary Disqualification (2)

- **A supervisor may disqualify an employee from participating in a government matter that affects the financial interests of:**

(4) Company with which employee has business relationship in personal capacity (e.g., customer in off-duty employment business),

(5) Organization in which employee served, within the last year, as officer, director, trustee, consultant, contractor or employee,

(6) Organization in which employee's spouse is serving as officer, director, trustee, consultant, contractor or employee

COI -- Discretionary Disqualification (3)

- **<u>Balancing test</u>. In above situations, supervisor should allow employee to participate in the matter only if supervisor determines that government's need to have that employee participate in the matter outweighs the appearance problems that would result**

- **Supervisor who makes this judgment must be commissioned officer or civilian GS-12 or above (exception: for General Officer com-manders, this determination is made by JA)**

Conflict of Interest -- Stock Ownership

- **If you (or your spouse or minor child) own stock in a company, you may not work on:**
  - **Any contract awarded to the company,**
  - **Any source selection in which the company is competing, OR**
  - **Any other government matter in which the company has a financial interest (18 USC 208)**

- **Exception: if the stock owned by you, your spouse and your minor children in a company has market value of $5000 or less, you may work on government matters that affect the financial interests of that company (5 CFR 2640.202(a))**

Conflict of Interest -- Representing Others

- **Federal employees may not represent individuals, companies or other organizations before any Federal agency**
  - **Applies to officers & civilians (not enlisted)**
  - **Applies if representation is compensated (18 USC 203) or uncompensated (18 USC 205)**
  - **Exception for representing certain relatives**

- **<u>Exception</u>: You may engage in uncompensated representation of a non-profit organization if a majority of the members are Federal employees or their spouses or children, and if certain other conditions apply (18 USC 205(d))**

COI -- Composition of Government Evaluation Board in A-76 Source Selection

- **On 12 Jan 99, the Comptroller General issued a decision on an A-76 source selection where the agency decided to keep the work in-house, and where 14 of the 16 agency employees who evaluated the proposals had positions that were part of the cost comparison study (and thus were subject to being contracted out). (Comp. Gen. Decision B-281224)**

- **The private sector offerors filed bid protest, and Comptroller General found there was a significant conflict of interest, and sustained the protest.**

Financial Disclosure -- SF 278

- **Standard Form (SF) 278 ("Public Financial Disclosure Report") must be completed by General/Flag Officers, SES members, and SES-equivalent employees (STs & SLs)**

- **SF 278 must be filed:**
  - **Within 30 days of entering SF 278 position (e.g., date of promotion to Brigadier General),**
  - **Each year by 15 May, and**
  - **Within 30 days after leaving position (e.g., date of retirement or resignation)**

- **$200 penalty for filing late (JER ¶ 7-203g)**

Financial Disclosure -- OGE Form 450

- **OGE Form 450 is "Confidential Financial Disclosure Report"**

- **Must complete OGE Form 450 (or 450A) if you are:**
  - **Colonel or below, or GS-15 & below, and your duties involve decision-making or significant judgment in contracting or procurement, OR**
  - **Colonel or below, and the commander of an AF installation, base, air station or activity**

- **Form must be completed within 30 days after entering such a position and every Oct or Nov**

Financial Disclosure -- OGE Form 450A

- **OGE Optional Form 450A -- "Confidential Certificate of No New Interests" -- approved in '97**

- **DoD employees may file the 450A if:**
  - **They have no new interests to be reported,**
  - **They attach copy of their last OGE Form 450, &**
  - **The calendar year is <u>not</u> a multiple of four, I.e., everyone must submit the OGE Form 450 in 2000, 2004, 2008, etc. (JER 7-300b(3))**

- **DoD employees must use DoD version of 450A, which is available at AFMC Law Office website**

Gifts from Outside Sources (Gifts) -- General Rules

- **Employees may not accept gifts:**
  - **Offered because of their official position, OR**
  - **From a "prohibited source" (DoD contractor)**
- **30 exceptions (actually 9 items excluded from definition of a gift, and 21 exceptions)**
- **Gifts to relatives -- because of their relationship with you -- are considered to be gifts to you**

Gifts -- Exclusions from the Definition of a "Gift"

- **Modest items of food & drink not part of a meal (e.g., coffee, soft drinks, donuts, hors d'oeuvres)**
- **Items with little intrinsic value intended solely for presentation (e.g., plaques, certificates & trophies)**
- **Opportunities & benefits offered to the public, to all government employees, or to all military personnel Example: "military discount" for airlines & hotels**

Gifts -- $20 / $50 Rule

- **You may accept gifts up to $20 in value at one time (but never cash or investments)**
- **Gifts from one source (e.g., one company) can't exceed $50 in value in a calendar year**
- **You may not "buy down" to $20, I.e., pay $5 and then accept a gift worth $25**
- **The $20 limit is per occasion and per source -- example: at trade show you may accept gifts worth $20 or less from four contractors (as long as $50 annual per company cap is not exceeded)**

Gifts -- Widely Attended Gatherings (1)

A DoD employee may accept free attendance at an event (e.g., dinner, reception, conference, seminar, training course) if it is determined that:

(1) Large number of persons expected to attend,

(2) His attendance would further DoD programs or operations,

(3) Attendees have diversity of views or interests, and

Gifts -- Widely Attended Gatherings (2)

(4) Cost of employee's free attendance is paid for by:

(A) the sponsor of the event, OR

(B) a non-sponsor that pays for one or more government employees, but doesn't choose which employee(s) it will pay for, OR

(C) a non-sponsor that picks which government employee(s) it will pay for, if more than 100 people are expected to attend, and the value of free atten-dance (for the employee & spouse) is $250 or less

Gifts -- Aircraft Rollout Ceremonies

- **If your commander or civilian director has approved your attendance at "a ceremony to mark the completion of a milestone in shipbuilding, aircraft completion, or similar vehicle launch or rollout," you may accept:**
  - **Free attendance at functions (reception, lunch, dinner, etc.) if not lavish or excessive, and**
  - **Gifts or mementos, if you're official participant in the ceremony; total value does not exceed $100 per family, and cost is not borne by US Govt.**

Gifts -- From Foreign Governments

- **You generally may keep a gift from a foreign govt., if it has a market value of $260 or less (AFI 51-901)**
- **Gift worth more than $260**
  - **Personal property items belong to government**
  - **Travel expenses can accepted with CC approval**
- **If foreign government is engaged in selling to DoD, you should seek advice before retaining the gift**
- **Rules apply to active duty, reservists, civilian employees, and the dependents of each**

Government Property -- Basic Rule

- **Basic rule: Employees shall not use government property for "other than authorized purposes" (5 CFR 2635.704) -- so look to specific legal rules**
- **Rules on govt. vehicles (AFI 24-301, Chap. 3)**
- **Rules on use of internet (AFI 33-129, 1 Jan 97)**
- **Rules on government postage (AF Supplement to DoD Official Mail Manual; OpJAGAF 1995/103)**

Government Property -- E-Mail

Govt. e-mail may be used for personal communications if supervisor (who is commissioned officer or GS-11 or above) determines:

(1) No adverse effect on performance of duties,

(2) Use is of reasonable duration & frequency,

(3) Use serves a legitimate public interest,

(4) Use does not reflect adversely on Air Force,

(5) Use does not overburden the system, and

(6) Use does not create signif. additional cost

[JER ¶ 2-301a; AFI 33-119, 1 Mar 99, ¶ 3.3.2.]

Government Property -- E-Mail

Govt. e-mail cannot be used for the following:

(1) Sending items in violation of copyright laws

(2) Sending e-mail for personal financial gain

(3) Misrepresenting your identity or affiliation

(4) Sending harassing or offensive material, including humor in poor taste, political or religious lobbying, & pornographic items

(5) Using someone else's userID w/o authority

(6) Causing congestion on the network

[JER ¶ 2-301a; AFI 33-119, 1 Mar 99, ¶ 3.3.1.]

Government Property -- Reservists and Guard Members

- **On 4 Jan 99, Comptroller General issued an opinion stating that Federal agencies may permit their employees who are Reservists or Guard members to use a limited amount of official time and agency resources to support the Reserves or Guard, subject to supervisor's approval (Comp. Gen. Decision B-277768)**

- **OPM is currently drafting guidelines on how much time and what types of resources can be used for these purposes, and under what circumstances (SOCO Advisory 99-3, 26 Apr 99)**

Misuse of Position (MOP) -- General Rules

- **DoD employees must use official time to perform official duties (5 CFR 2635.705(a))**
- **DoD employees may not ask or direct their subordinates to use official time for other than official duties (5 CFR 2635.705(b))**
- **DoD employees may not use govt. property for other than authorized purposes (5 CFR 2635.704)**
- **DoD employees may not use non-public information to further their own private interests, or the private interests of others (5 CFR 2635.703)**

MOP -- Letters of Recommendation

- **When writing a letter of recommendation (or a character reference), you may use official stationery and may sign using your official title, only if the letter is based upon your personal knowledge of the ability or character of:**
  - **An individual with whom you have dealt in the course of Federal employment, OR**
  - **An individual whom you are recommending for Federal employment (5 CFR 2635.702(b))**
- **Otherwise, you may not use official stationery and you may not sign the letter using your official title**

MOP -- Letters of Appreciation to Contractors

- **Appropriated fund contracts - AFI 36-1004 states that it is DoD policy to not recognize private citizens or private entities that have a commercial or profit making relationship with the Department, unless the contribution is substantially beyond that specified or implied in the terms of the con-tract, or the recognition is in the public interest.**

- **NAF contracts - Air Force Manual 64-302, Non-appropriated Fund Contracting, para. 1.4 states: "Letters of Appreciation to Commercial Firms. Do not send formal or informal letters of appreci-ation to contractors. A job well done and timely payments show the success of the contract."**

Non-Federal Organizations (NFO) -- Three Ways for Employees to Participate

- **Serve in a management position (officer, director or trustee) in an official capacity**
  - **Requires approval by DoD/GC (JER 3-202)**
  - **Disfavored for conflict of interest reasons, unless authorized by law (DoD/GC Ltr, 8 Jun 95)**

- **Serve as DoD Liaison in official capacity - requires approval by one's commander (JER 3-201a)**

- **Serve in mgmt. position or as member in personal capacity -- no approval required (JER 3-301)**

Non-Federal Org.s -- Management Positions

- In 1997, Congress enacted laws (10 USC 1033 & 1589) that allow DoD employees to participate, in their official capacities, in the management of:
  - The military relief societies (e.g., AFAF),
  - Entities that accredit the service academies,
  - Entities that regulate military health care, international athletic competitions, or the athletic programs of the service academies

- Must be approved by SECDEF & Service Secretary
  - List will be published in F.R. and updated yearly
  - Appointments were published in 16 Mar 00 F.R.

NFOs -- Serving as a DOD Liaison

- **If the commander wants to have a representative at meetings of a non-Federal organization on a regular basis, he or she may appoint an employee as a DoD Liaison to the organization**

- **Before appointing a DoD Liaison, commander must determine that having a DoD Liaison would serve a significant & continuing DoD interest**

- **DoD Liaisons serve as “the eyes and ears” of the commander; they perform their liaison functions as part of their official duties, and thus can use government resources in doing so**

Non-Federal Organizations -- Participation in a Personal Capacity

- **You may participate in a non-Federal organization as a member or in a management position (officer, director or trustee), in your personal capacity, if you act outside scope of your official position -- no approval is required (JER 3-301)**

- **<u>Exception</u>: You may not serve in a management position in a non-Federal organization in a personal capacity, if the position is offered to you because of your DOD assignment or position (JER 3-301)**

Non-Federal Organizations -- Serving as Advisor to Defense Contractor

- **On 5 Aug 96, DoD/GC issued memo stating that "DoD employees may not serve in any way as advisors to defense contractors or entities that seek to do business with DOD" -- no distinction made between official & personal capacities**

- **On 7 May 99, DoD/GC issued memo on same subject that "supersedes" the 5 Aug 96 memo**
  - **Employees may not serve as advisors to defense contractors in their official capacity**
  - **Employees may do so in personal capacity, if it complies with 12 conditions listed in the memo**

Non-Federal Organizations -- Service by General or Flag Officer as Officer or Board Member for Compensation

- General / Flag Officers may not accept compensation for serving as an officer or board member of a non-Federal organization (DepSecDef Ltr, 23 Jul 96)

- Exception for professional associations & family entities -- requires SECAF approval

- May accept travel expenses to attend Direc-tors meetings (HQ USAF/JAG Ltr, 30 Jul 96)

Non-Federal Organizations (NFO) -- Using Your Official Title & Organization Name

- **Military & civilian employees who participate in a NFO activity in an official capacity (such as giving a speech at NFO conference) may allow the NFO to use their official title and organization name in connection with that activity (in the conference program, for example)**

- **Military & civilian employees who participate in an NFO activity in their personal, off-duty capacity may not allow the NFO to use their official title or organization name in connection with that activity**

NFOs -- Using Rank & Branch of Service

- **Military members who participate in NFO activity in their official capacity may allow the NFO to use their military rank & branch of service**

- **Military members who participate in NFO activity in their personal capacity may also allow the NFO to use their military rank & branch of service (but not their official title or organization name)**

- **Example: When Col Smith makes speech at NFO conference in personal capacity, the program:**
  - **May say: " Colonel John Smith, US Air Force"**
  - **May not say: "Col Smith, Director, F-16 SPO"**

NFOs -- Endorsements & Notifications

- **<u>Endorsement</u>: You may not officially endorse non-Federal entities, or their products, services or events (JER 3-209)**

- **<u>Notification</u>: You may use official channels to notify other DoD employees of events of common interest sponsored by non-Federal entities (JER 3-208)**

- **On 28 May 96, DoD/GC issued memo stating that in drafting notification letters, "all words of praise for any non-Federal entity or event should be avoided," and words such as endorse, support, recommend and urge should not be used**

Off-Duty Employment (ODE) -- Approval

- **Certain employees required to get prior approval of ODE -- rule may depend on what MAJCOM you work for -- use AF Form 3902 to get approval**

- **ODE can be disapproved only if it:**
  - **Is prohibited by statute or regulation,**
  - **Would detract from readiness, OR**
  - **Would create a security risk (JER 2-206, 2-303)**

- **AFMC employees (military and civilian) are required to obtain prior written approval for ODE (AFMC Instruction 51-201)**

Off-Duty Employment -- Teaching, Speaking & Writing Rule

- DoD employees may not receive compensation for teaching, speaking or writing if:
  - It's part of their official duties,
  - They're invited because of their official position or invitation is from a prohibited source,
  - Activity draws on non-public information,
  - Subject deals with matter they're assigned to now or during previous 1-year period, OR
  - Subject deals with any announced or ongoing DoD policy, program or operation (5 CFR 2635.807(a))

ODE -- Teaching, Speaking & Writing Rule

- **Compensation ban does not apply to:**
  - **Teaching a course requiring multiple presentations at elementary/secondary school or college**
  - **Teaching, speaking or writing on a subject within one's discipline or inherent area of expertise, based on educational background or experience**

- **Definition of "compensation"**
  - **Includes any form of income and travel expenses**
  - **Does not include waiver of attendance fee, meals furnished as part of event where speech takes place, course materials, or videotape of speech**

ODE -- Teaching, Speaking & Writing Rule

- **The ban on an employee accepting reimbursement from private sources for travel expenses in connec-tion with unofficial speaking or writing engage-ments concerning subject matter of the employee's work was found by the court to be invalid (see Sanjour v EPA, 56 F.3d 85 (D.C. Cir. 1995), decision on remand, 7 F.Supp. 2d 14 (D.D.C. 1998))**

- **On 25 Nov 98, Office of Govt. Ethics announced that agencies may not enforce ban on employees (except for "covered noncareer employees") accepting travel expenses in connection with teaching, speaking or writing in personal capacity that relates to their official duties (see OGE Memo, 25 Nov 98; SOCO Advisory 98-10)**

Off-Duty Employment -- Working Part-Time For a Foreign Govt.

- **Military officers & enlisted personnel may not work for a foreign government (AFI 36-2913)**
- **Federal civilian employees may not work for a foreign government without the consent of Congress (6 Op. O.L.C. 156 (1982))**
- **Rules also apply to educational or commercial institutions owned, operated or controlled by a foreign government**

Procurement Integrity Law -- The Four Basic Provisions of the Law

- **Ban on disclosing procurement information**
- **Ban on obtaining procurement information**
- **Requirement to report employment contacts**
- **The 1-year ban on accepting compensation from a contractor that was awarded a contract over $10,000,000**

Procurement Integrity Law -- Ban on Disclosing Procurement Information

- **The new Procurement Integrity law prohibits, before contract award, the disclosure of:**
  - **Source selection information, &**
  - **Contractor bid or proposal information**

- **The ban (41 USC 423(a)) applies to:**
  - **Current and former Federal employees, &**
  - **Anyone who is advising or has advised the U.S. Govt. regarding the procurement (i.e., contractor employees & consultants)**

Procurement Integrity Law -- Ban on Obtaining Procurement Information

- **The new Procurement Integrity law provides that a person may not knowingly obtain "source selection information" or "contractor bid or proposal information" before contract award, other than as provided by law**

- **The ban (41 USC 423(b)) applies to everyone, including Federal employees and contractor employees**

Procurement Integrity Law -- Employment Contact Reporting Rule

If an employee (officer, enlisted or civilian) is --

- **Participating personally & substantially in a procurement, and**
- **Contacts, or is contacted by, a bidder or offeror regarding possible employment,**

then the employee must --

- **Give written report to supervisor & Designated Agency Ethics Official or designee, and**
- **Either (1) reject the possibility of employment, or (2) be disqualified from working on procurement until job discussions end & there is no arrangement for employment**

Procurement Integrity Law -- Employment Contact Reporting Rule

- **Rule applies only to contracts in excess of simplified acquisition threshold ($100,000)**
- **Rule applies only between date when bids or proposals are received & contract award date**
  - **Rule applies to contacts with “bidders” & “offerors”**
  - **A company is not a “bidder” or “offeror” until it submits a bid or offer**

Procurement Integrity Law -- 1-Year Compensation Ban

- **People who serve in one of seven positions, or who make one of seven types of decisions, on a contract over $10 million, may not accept compensation from the contractor for 1 year**

- **1-year ban is on accepting compensation from the contractor as an employee, consultant, officer or director**

- **Ban can apply to officers, enlisted & civilians**

Procurement Integrity Law -- Positions Resulting in 1-Year Comp. Ban

- Procuring Contracting Officer
- Source Selection Authority
- Member of Source Selection Evaluation Board
- Chief of financial or technical evaluation team
- Program Manager
- Deputy Program Manager
- Administrative Contracting Officer

Procurement Integrity Law -- Decisions Resulting in 1-Year Comp. Ban

- **Decision to award a contract over $10 million**
- **Decision to award a subcontract over $10 million**
- **Decision to award a modification that is over $10 million of a contract or subcontract**
- **Decision to award a task order or delivery order over $10 million**

Procurement Integrity Law -- Decisions Resulting in 1-Year Comp. Ban

- **Decision to establish overhead or other rates applicable to a contract or contracts valued over $10 million**
- **Decision to approve issuance of a contract payment or payments over $10 million**
- **Decision to pay or settle claim over $10 million**

Procurement Integrity Law -- When 1-Year Comp. Ban Starts

- For PCO's, SSA's, SSEB members, & evaluation team chiefs, ban starts on date of contract award
  - Exception: If an individual was serving in the position on the date of contractor selection, but not on the date of contract award, the ban begins to run on date of contractor selection
- For PMs, DPMs & ACOs, ban starts to run on last day of service in the position
- For decisionmakers, ban starts on date of decision

Procurement Integrity Law -- 1-Year Compensation Ban

- **<u>Other divisions</u>: 1-year ban does not apply to accepting compensation from any division or affiliate of a contractor that does not produce the "same or similar products or services" as the entity of the contractor that has the contract the person worked on**

- **People can request legal opinion on whether ban applies ("30-day letter") -- must be issued within 30 days after receipt of written request (or as soon thereafter as practicable)**

Post-Government Employment (PGE) -- Lifetime Representation Ban

- **If a Federal employee participates personally & substantially in a contract, he may go to work for the contractor, but may never act as contractor's negotiator or representative before any Federal agency on that contract (18 USC 207(a)(1))**

- **Applies to officers & civilians, but not enlisted**

- **Applies to contracts & other "particular matters" (asset sales, environ. claims, personnel actions)**

PGE -- 2-Year Representation Ban

- **If a Federal employee has a contract under her official responsibility during her last year in the government, she may go to work for the contractor, but may not, for 2 years, act as contractor's negotiator or representative before any Federal agency <u>on that contract</u> (18 USC 207(a)(2))**

- **Applies to officers & civilians, but not enlisted**

- **Applies to contracts & other "particular matters" (asset sales, environ. claims, personnel actions)**

PGE -- What is Prohibited by Lifetime & 2-Year Representation Rules

- **What is prohibited: communicating with or appearing before any Federal employee, with the intent to influence the employee, regarding the contract (or other matter) that the ban applies to**

- **Examples:**
  - **Acting as company's negotiator**
  - **Speaking for company in contract dispute**
  - **Seeking for the company a discretionary ruling, benefit, action or approval by the govt. (e.g., a contract claim, modification, ECP, etc.)**

PGE -- What is Permitted under Lifetime & 2-Year Representation Rules

- **What is permitted: communicating with or appearing before Federal employees regarding a contract (or other matter) where there is no intent to influence (i.e., merely providing or obtaining information). Examples:**
  - **Providing purely factual information to govt. personnel regarding a contract**
  - **Requesting purely factual information from govt. personnel regarding a contract**
  - **Requesting from the govt. publicly available documents related to a contract**

PGE -- One-Year No Contact Rule

- **“Senior employees” may not, for 1 year, commu-nicate with, or appear before, any employee of their former agency, on behalf of a third party, in connection with any matter on which the third party seeks official action by their former agency**

- **The rule (18 USC 207(c)) applies to:**
  - **General / Flag Officers (O-7 to O-10),**
  - **SES employees at Levels 5 & 6, and**
  - **SES-equivalent employees (e.g., ST & SL) whose basic rate of pay (excluding locality-based pay) is equal to or greater than basic pay of SES Level 5**

PGE -- 1-Year Ban on Advising Foreign Entities (18 USC 207(f))

- "Senior employees" may not, for 1 year:
  - Represent a foreign entity before any Govt. agency with intent to influence a decision by that agency, OR
  - Aid or advise a foreign entity with intent to influence a decision by a U.S. Govt. agency

- "Foreign entity" means foreign government or foreign political party; "senior employee" has same definition as for 1-year no-contact rule

PGE -- Retired Military Members Working for a Foreign Government

- **Retired Air Force (AF) officers & enlisted may not work for a foreign government without prior approval by AF Personnel Center (AFI 36-2913)**
  - **Applies to reservists receiving retired pay**
  - **Applies to educational & commercial institutions owned or controlled by foreign govt.**

- **On 4 Feb 99, HQ AFPC/DPPTU advised that requests for approval will not be accepted until requester has approved retirement date, and approval can take up to one year (about a month by Air Force and 6-12 months by State Dept.)**

Government Frequent Flyer Miles -- Permissible Uses

- **Frequent flyer miles that are earned as a result of official travel belong to the government.**

- **You may use such miles to obtain:**
  - **A ticket that is used in government travel, or**
  - **An upgrade to business class on govt. travel.**

- **"Business class" means an intermediate class, I.e., the aircraft must have three classes of seats for it to have an intermediate class for which you may use government frequent flyer miles.**

Government Frequent Flyer Miles -- Prohibited Uses

- **You may not use frequent flyer miles that are earned as a result of official travel for:**
  - **Personal travel,**
  - **Permissive TDY travel,**
  - **Upgrade to first class on government travel,**
  - **Gift to charity,**
  - **Magazine subscription for your govt. agency,**
  - **Travel after leaving government service, OR**
  - **Any other purpose.**

Government Frequent Flyer Miles -- Commingling with Personal Miles

- **If you put personal miles and government miles in the same account, all miles belong to the government, unless you can clearly show that certain miles are the result of personal travel.**

- **One approach: have one frequent flyer plan for your official travel and another frequent flyer plan (perhaps with a different airline) for your personal travel.**

Govt. Frequent Flyer Miles -- Affinity Cards

- **If you use personal credit card (I.e., affinity card) to pay for costs of official travel (I.e., those for which you are <u>not</u> required to use the government travel card), and the credit card company has arrangement with an airline, under which you earn frequent flyer miles for every dollar you charge on your credit card, you <u>may</u> keep those frequent flyer miles for personal use. In short:**
  - **Frequent flyer miles earned from a flight that is paid for by the govt. belong to the government.**
  - **Frequent flyer miles earned while on official travel because you pay for something with your affinity card belong to you.**

Government Frequent Flyer Miles -- New Requirement to Use Govt. Travel Card

- **Executive Branch employees are now required to use the government contractor-issued travel charge card to pay for expenses of official travel.**

- **For DoD personnel, requirement to use the card applies to travel that begins after 30 April 2000.**

- **If you are required to use your government travel charge card to pay for something (e.g., airfare, hotel & rental car), then you will not be able to pay for it using your affinity credit card.**

New Requirement to Use Govt. Travel Card

- **GSA exempted eight types of travel costs from the requirement to use government travel card:**
  - **Expenses from vendors that don’t take card**
  - **Laundry & dry cleaning**
  - **Parking**
  - **Local transportation system fares**
  - **Taxi fares**
  - **Tips**
  - **Meal charges when use of card is impractical (such as when dining as a group)**
  - **Phone calls, when govt. calling card available**

New Requirement to Use Govt. Travel Card

- **DoD added two more types of travel costs that are exempt from the requirement to use the govt. travel card. [See USD(C) Memo dated 18 Feb 00]**
  - **All expenses covered by the "meals and incidentals" portion of the per diem allowance**
  - **All local and long distance calls**

- **In summary, you may use your personal affinity credit card to pay for costs of official travel (as long as you are <u>not</u> required to use the government travel card to pay for them), and you may keep the resulting frequent flyer miles for personal use.**

Upgrades on Official Travel -- When the Government Will Pay for It

- **First class accommodations allowed only when:**
  - **No other accommodations are reasonably available (within 24 hours of the required arrival / departure time).**
  - **The employee is so physically impaired that other accommodations cannot be used, OR**
  - **Exceptional security circumstances exist.**

- **Premium class other than first class (business class) accommodations allowed in the nine situations listed in JFTR / JTR**

Upgrades on Official Travel -- When You May Accept Them as a Gift

- **You may upgrade to first class on govt. travel if:**
  - **Promotional offer (ex: for opening account),**
  - **It’s an on the spot upgrade, OR**
  - **Because of membership in club (such as Gold Card Club) for people with certain number of miles (even if all miles are from govt. travel)**
- **But you may not accept upgrade based on rank**

Upgrades on Official Travel -- Buying Them with Your Personal Funds or Personal Frequent Flyer Miles

- **Federal employees may use personal funds to upgrade to first class or business class while on official travel. [See Office of Management and Budget Memorandum, "Clarification of First Class Travel Policies," 19 September 1994]**

- **Federal employees may use personal frequent flyer miles to upgrade to first class or business class while on official travel. [See HQ USAF General Law Division Memorandum, "Travel Upgrades," 9 January 1995.**

Overbooked Flights -- The Involuntary Bump

- **If you are involuntarily bumped from an overbooked flight on official travel, any compensation you receive belongs to the government.**

- **Monetary compensation received as a result of an involuntary bump should be deposited into the U.S. Treasury's miscellaneous receipts account (unless there is a statutory provision that authorizes the money to be deposited to a specific appropriation).**

Overbooked Flights -- The Voluntary Bump

- **If you are on official travel, and your flight is overbooked, and the airline asks for volunteers to take a later flight, you <u>may</u> volunteer to take the later flight, as long as doing so does not interfere with the mission.**

- **You <u>may</u> keep the compensation the airline pays you for taking the later flight, as long as taking the later flight does not result in any additional cost to the government. For example, you may not claim extra per diem for the extra time you spent away from home because you took the later flight.**

Gifts of Travel -- Authority for Accepting

- **Three statutes that authorize Federal government agencies to accept gifts of travel expenses are:**
  - **31 USC 1353 -- travel payments from non-Federal sources**
  - **5 USC 7342 -- gifts from foreign governments**
  - **10 USC 2601 -- gifts to Army, Navy, Air Force**
- **If the gift can be accepted under provisions of 31 USC 1353, it must be. If gift cannot be accepted under 31 USC 1353, you look to see if it can be accepted under another statute.**

Travel Payments from Non-Federal Sources (31 USC 1353) -- General Rule

- **You may accept a travel payment from a non-Federal source if all of the following are true:**
  - **The payment is in connection with a meeting or function that relates to your official duties.**
  - **The function will take place away from your duty station.**
  - **You will attend function in an official capacity.**
  - **The payment would not cause a reasonable person to question integrity of DoD operations.**
  - **Acceptance of the payment is approved by your travel-approving authority before travel begins.**

Travel Payments from Non-Federal Sources -- Definitions

- **“Non-Federal source” means any person or entity other than the U.S. Government. It includes private companies, nonprofit organizations, state governments, and foreign governments.**

- **“Travel payments” that can be accepted include:**
  - **Airfare**
  - **Hotel accommodations**
  - **Rental car**
  - **Waiver of conference registration fee**

Travel Payments from Non-Federal Sources -- When You May Accept

- **You may accept travel payments from a non-Federal source under 31 USC 1353 to attend:**
  - **An event where you will participate as a speaker or panel member,**
  - **A conference, seminar or similar event where you will receive training, OR**
  - **An event where you will receive an award or honorary degree.**

Travel Payments from Non-Federal Sources -- When You May Not Accept

- **You may not accept a travel payment from a non-Federal source under 31 USC 1353 to attend:**
  - **A meeting that is required to carry out the statutory or regulatory functions of your agency (e.g., audits, inspections, site visits, negotiations, litigation), OR**
  - **Promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.**

Travel Payments from Non-Federal Sources -- Accompanying Spouse

- **A Federal agency may accept a travel payment from a non-Federal source for an accompanying spouse, if the spouse will:**
  - **Support the mission of the agency or assist the employee in carrying out official duties,**
  - **Attend a ceremony where the employee will receive an award or honorary degree, OR**
  - **Participate in substantive programs related to the agency's programs or operations.**

Travel Payments from Non-Federal Sources -- Reporting the Payments

- **Payments are gift to agency and are not reported on financial disclosure form (e.g., OGE Form 450).**
- **If you receive over $250 in benefits for any one event, must do written report of benefits received.**
- **Can report benefits on SF 326. Use of SF 326 is mandatory for Air Force personnel.**
- **SF 326 can be printed directly from GSA website (http://www.gsa.gov/forms/pdf_files/sf326.pdf)**

Travel Payments from Non-Federal Sources -- Miscellaneous Rules

- **You may not accept cash or a check payable to you. The payment must be:**
  - **An in-kind payment, OR**
  - **A check payable to your agency.**
- **You may not accept a gift of travel payments under 31 USC 1353 for permissive TDY travel.**
- **If the travel payment can be accepted under 31 USC 1353, it must be accepted under that authority, and not any other law or regulation.**

Gift of Travel From Foreign Government -- General Rule

- **Under the Foreign Gifts and Decorations Act (5 USC 7342), you may accept a gift of travel or travel expenses from a foreign government, for travel taking place entirely outside the United States, if accepting the gift is:**
  - **Appropriate,**
  - **Consistent with the interests of the U.S., and**
  - **Permitted by your agency. [5 USC 7342]**

Accepting Travel as a Gift to the Agency

- **10 USC 2601 authorizes the Army, Navy, Air Force and Coast Guard to accept gifts.**
- **Another possible way to accept a gift of travel is to accept it as a gift to your agency.**
- **To accept a gift of travel as a gift to the agency, it must be accepted in accordance with the agency's gift acceptance procedures that implement 10 USC 2601.**

Accepting Travel as a Gift to the Agency -- Examples

- **Examples of travel expenses that can be accepted as a gift to the agency include:**
  - **Travel expenses of flight crews who fly government aircraft at international air shows**
  - **Travel expenses of employees who attend ceremonial events to enhance public relations (such as military bands)**
  - **Travel expenses offered after travel has begun (since they can't be accepted under 31 USC 1353)**

Benefits from Inconvenience During Travel

- **The Comptroller General has ruled that, where a Federal employee on official travel suffered a five-hour flight delay, and the airline gave him a free round-trip ticket, the ticket belongs to the govt.**

- **The Comptroller General has ruled that, where a Federal employee on official travel was denied lodging at a hotel where she had a reservation because it was overbooked, and the hotel gave her a coupon for one free night of lodging, the coupon belongs to the government.**

- **But the JFTR/JTR says you may keep compen-sation the airline pays for lost or delayed luggage.**

Travel -- Travel in Contractor Vehicles

- **If the transportation is duty-related (I.e., received in connection with official duty & having the effect of reducing govt. expenditures), it is gift to the agency, not to the individual. The government generally should not accept such travel unless:**
  - **It is permitted in the terms of the contract,**
  - **Govt. has agreed to reimburse the contractor, or**
  - **Acceptance was approved in advance under statutory gift authority (OGE opinion 98 X 8)**

- **If contractor offers travel after working hours, it would be gift to the individual & could potentially be accepted under $20 / $50 rule (OGE opinion 98 X 8)**

Miscellaneous Issues

- **Promotional items. You may keep promotional items of nominal value that you receive in connection with official travel, such as pens, pencils or calendars.**

- **Prizes. The rules on accepting prizes won in connection with official travel are somewhat complicated. For guidance on this issue, see 5 CFR 2635.203(b)(5); JER para. 4-202c; Office of Government Ethics (OGE) Opinion 99 X 7, 26 April 1999]**